

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 06-3886

In re: Dye
(D. Del. No. 05-cv-684)

To: Clerk

1) Praecipe Filed April 11, 2007

The foregoing Submission is construed as a motion for reconsideration of the March 26, 2007 order dismissing the appeal. Reconsideration is granted. The March 26, 2007 order dismissing the appeal will not be modified or vacated at this time. Although appellant avers that, "Payment in full was submitted to the District court," the District Court docket fails to reflect the payment of the \$ 455.00 in fees attributable to the appeal. If the fee has been paid, this is a matter which must be resolved in the District Court.

It is noted that a motion for reconsideration of the denial of in forma pauperis status on appeal is pending in the District Court. However, it appears that the case is not currently assigned to a judge pending the filing of a judicial vacancy on that Court. Accordingly, this order is without prejudice to the filing of a motion to reopen the appeal if either the District Court grants or otherwise decides the motion for reconsideration or the filing fee is actually paid.

If appellant chooses to wait for disposition of the pending motion for reconsideration, the motion to reopen must be filed in this Court within ten (10) days of the date of the disposition of the motion and must be accompanied by fully and properly completed motion for leave to proceed in forma pauperis.

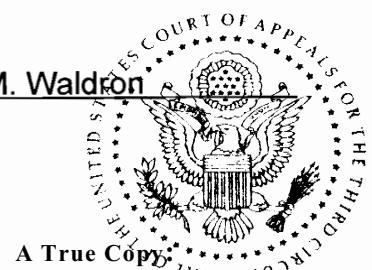
Should the appellant choose to pay the fee, the fee must be paid within ten (10) days of the date of this order and a motion to reopen the appeal filed within ten (10) days thereafter. The decision to reopen the appeal is a matter solely within the discretion of the Court and will not be determined by the clerk.

In the event the fee attributable to the appeal has actually been paid, when notice is received from the District Court, the matter will be reconsidered at that time.

As to the March 26, 2007 order, the payment of the appellate filing fee is required by 28 U.S.C. § 1913. The clerk is required to collect this fee or to insure that the fee has been waived through the grant of in forma pauperis status. Since neither of those two events has occurred, the appeal was dismissed by the clerk in accordance with the authority conferred by Misc. Rule 107.1, Third Circuit Local Appellate Rules.

For the Court,

Marcia M. Waldron
Clerk



Marcia M. Waldron
Marcia M. Waldron, Clerk

Dated: May 22, 2007
CLW/cc: Mr. Phillip A. Dye
Stuart B. Drowos, Esq.
Michael B. Joseph, Esq.